

26-35a-101. Title.

This chapter is known as the "Nursing Care Facility Assessment Act."

Enacted by Chapter 284, 2004 General Session

26-35a-102. Legislative findings.

(1) The Legislature finds that there is an important state purpose to improve the quality of care given to persons who are elderly and to people who have a disability, in long-term care nursing facilities.

(2) The Legislature finds that in order to improve the quality of care to those persons described in Subsection (1), the rates paid to the nursing care facilities by the Medicaid program must be adequate to encourage and support quality care.

(3) The Legislature finds that in order to meet the objectives in Subsections (1) and (2), adequate funding must be provided to increase the rates paid to nursing care facilities providing services pursuant to the Medicaid program.

Amended by Chapter 366, 2011 General Session

26-35a-103. Definitions.

As used in this chapter:

(1) (a) "Nursing care facility" means:

(i) a nursing care facility described in Subsection 26-21-2(17);

(ii) beginning January 1, 2006, a designated swing bed in:

(A) a general acute hospital as defined in Subsection 26-21-2(11); and

(B) a critical access hospital which meets the criteria of 42 U.S.C. Sec. 1395i-4(c)(2) (1998); and
(iii) an intermediate care facility for people with an intellectual disability that is licensed under Section 26-21-13.5.

(b) "Nursing care facility" does not include:

(i) the Utah State Developmental Center;

(ii) the Utah State Hospital;

(iii) a general acute hospital, specialty hospital, or small health care facility as defined in Section 26-21-2; or

(iv) a Utah State Veterans' Home.

(2) "Patient day" means each calendar day in which an individual patient is admitted to the nursing care facility during a calendar month, even if on a temporary leave of absence from the facility.

Amended by Chapter 366, 2011 General Session

26-35a-104. Collection, remittance, and payment of nursing care facilities assessment.

(1) (a) Beginning July 1, 2004, an assessment is imposed upon each nursing care facility in the amount designated in Subsection (1)(c).

(b) (i) The department shall establish by rule, a uniform rate per non-Medicare patient day that may not exceed 6% of the total gross revenue for services provided to

patients of all nursing care facilities licensed in this state.

(ii) For purposes of Subsection (1)(b)(i), total revenue does not include charitable contribution received by a nursing care facility.

(c) The department shall calculate the assessment imposed under Subsection (1)(a) by multiplying the total number of patient days of care provided to non-Medicare patients by the nursing care facility, as provided to the department pursuant to Subsection (3)(a), by the uniform rate established by the department pursuant to Subsection (1)(b).

(2) (a) The assessment imposed by this chapter is due and payable on a monthly basis on or before the last day of the month next succeeding each monthly period.

(b) The collecting agent for this assessment shall be the department which is vested with the administration and enforcement of this chapter, including the right to audit records of a nursing care facility related to patient days of care for the facility.

(c) The department shall forward proceeds from the assessment imposed by this chapter to the state treasurer for deposit in the restricted account as specified in Section 26-35a-106.

(3) Each nursing care facility shall, on or before the end of the month next succeeding each calendar monthly period, file with the department:

(a) a report which includes:

(i) the total number of patient days of care the facility provided to non-Medicare patients during the preceding month;

(ii) the total gross revenue the facility earned as compensation for services provided to patients during the preceding month; and

(iii) any other information required by the department; and

(b) a return for the monthly period, and shall remit with the return the assessment required by this chapter to be paid for the period covered by the return.

(4) Each return shall contain information and be in the form the department prescribes by rule.

(5) The assessment as computed in the return is an allowable cost for Medicaid reimbursement purposes.

(6) The department may by rule, extend the time for making returns and paying the assessment.

(7) Each nursing care facility that fails to pay any assessment required to be paid to the state, within the time required by this chapter, or that fails to file a return as required by this chapter, shall pay, in addition to the assessment, penalties and interest as provided in Section 26-35a-105.

Enacted by Chapter 284, 2004 General Session

26-35a-105. Penalties and interest.

(1) The penalty for failure to file a return or pay the assessment due within the time prescribed by this chapter is the greater of \$50, or 1% of the assessment due on the return.

(2) For failure to pay within 30 days of a notice of deficiency of assessment required to be paid, the penalty is the greater of \$50 or 5% of the assessment due.

- (3) The penalty for underpayment of the assessment is as follows:
- (a) If any underpayment of assessment is due to negligence, the penalty is 25% of the underpayment.
 - (b) If the underpayment of the assessment is due to intentional disregard of law or rule, the penalty is 50% of the underpayment.
 - (4) For intent to evade the assessment, the penalty is 100% of the underpayment.
 - (5) The rate of interest applicable to an underpayment of an assessment under this chapter or an unpaid penalty under this chapter is 12% annually.
 - (6) The department may waive the imposition of a penalty for good cause.

Enacted by Chapter 284, 2004 General Session

26-35a-106. Restricted account -- Creation -- Deposits.

- (1) (a) There is created a restricted account in the General Fund known as the "Nursing Care Facilities Account" consisting of:
- (i) proceeds from the assessment imposed by Section 26-35a-104 which shall be deposited in the restricted account to be used for the purpose described in Subsection (1)(b);
 - (ii) money appropriated or otherwise made available by the Legislature; and
 - (iii) any interest earned on the account.
- (b) (i) Money in the account shall only be used:
- (A) to the extent authorized by federal law, to obtain federal financial participation in the Medicaid program;
 - (B) to provide the increased level of hospice reimbursement resulting from the nursing care facilities assessment imposed under Section 26-35a-104; and
 - (C) in the manner described in Subsection (1)(b)(ii).
- (ii) The money appropriated from the restricted account to the department:
- (A) shall be used only to increase the rates paid prior to the effective date of this act to nursing care facilities for providing services pursuant to the Medicaid program and for administrative expenses as described in Subsection (1)(b)(ii)(C);
 - (B) may not be used to replace existing state expenditures paid to nursing care facilities for providing services pursuant to the Medicaid program, except for increased costs due to hospice reimbursement under Subsection (1)(b)(i)(B); and
 - (C) may be used for administrative expenses, if the administrative expenses for the fiscal year do not exceed 3% of the money deposited into the restricted account during the fiscal year.
- (2) Money shall be appropriated from the restricted account to the department for the purposes described in Subsection (1)(b) in accordance with Title 63J, Chapter 1, Budgetary Procedures Act.

Amended by Chapter 340, 2010 General Session

26-35a-107. Adjustment to nursing care facility Medicaid reimbursement rates.

If federal law or regulation prohibits the money in the Nursing Care Facilities

Account from being used in the manner set forth in Subsection 26-35a-106(1)(b), the rates paid to nursing care facilities for providing services pursuant to the Medicaid program shall be changed as follows:

(1) except as otherwise provided in Subsection (2), to the rates paid to nursing care facilities on June 30, 2004; or

(2) if the Legislature or the department has on or after July 1, 2004, changed the rates paid to facilities through a manner other than the use of expenditures from the Nursing Care Facilities Account, to the rates provided for by the Legislature or the department.

Amended by Chapter 297, 2011 General Session

26-35a-108. Intermediate care facility for people with an intellectual disability -- Uniform rate.

An intermediate care facility for people with an intellectual disability is subject to all the provisions of this chapter, except that the department shall establish a uniform rate for an intermediate care facility for people with an intellectual disability that:

(1) is based on the same formula specified for nursing care facilities under the provisions of Subsection 26-35a-104(1)(b); and

(2) may be different than the uniform rate established for other nursing care facilities.

Amended by Chapter 366, 2011 General Session